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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

COMMERCIAL BUILDERS OF NORTHERN CALIFORNIA, and its affected members,

Petitioner,

v.

CITY OF SACRAMENTO, CALIFORNIA, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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NATIONAL ASSOCIATION OF HOME BUILDERS, INTERNATIONAL COUNCIL OF SHOPPING CENTERS, ASSOCIATION FOR COMMERCIAL REAL ESTATE, NATIONAL REALTY COMMITTEE, NATIONAL MULTI HOUSING COUNCIL, AND NATIONAL APARTMENT ASSOCIATION MOTION FOR LEAVE TO FILE A BRIEF *AMICI CURIAE* AND BRIEF IN SUPPORT OF THE PETITION

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April 22, 1992

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The National Association of Home Builders (NAHB), et al., respectfully move this Court for leave to file the accompanying brief *amici curiae* in support of Petitioners.

These *amici curiae* have received the petitioner's written consent to file this brief in support of

petitioner and have filed the letter of consent with the Clerk of this Court. The respondent city has not responded to our request for consent to file a brief in support of the petition.

The NAHB represents 157,000 builder and associate members organized in approximately 850 affiliated state and local associations in all fifty states, the District of Columbia, and Puerto Rico. Its members include not only people and firms that construct and supply single-family homes but also apartment, condominium, commercial and industrial builders, as well as land developers and remodelers. It is the voice of the American shelter industry.

The International Council of Shopping Centers (ICSC) is the trade association of the shopping center industry. It has approximately 24,000 members worldwide and approximately 22,000 in the United States. Its members, including developers, owners, retailers, lenders and all others having a professional interest in the shopping center industry, are engaged in the day-to-day activities of designing, planning, constructing, managing, financing, developing, leasing and owning shopping centers and their retail stores. It represents almost all of the 37,000 shopping centers in this country and is the only U.S. trade association specific to shopping centers.

The Association for Commercial Real Estate, formerly the National Association of Industrial & Office Parks, is a professional organization of more than 6,000 individuals engaged in owning, managing and developing office and industrial buildings in the United States and internationally. Its members include not only the nation's leading commercial real estate developers but also architects, brokers, master planners,

engineers, property managers, banks, insurance companies and other real estate financial groups.

The National Realty Committee represents the nation's leading developers, owners and financiers of income-producing real property. Its members include individuals and firms that design, plan, develop, lease, own, operate and finance income-producing real property, including office buildings, shopping centers, industrial buildings, warehouses and apartment buildings.

The National Multi Housing Council (NMHC) represents the country's larger and most respected multifamily rental housing firms. Its members are engaged in all aspects of the development and operation of rental housing including the ownership, building, financing, management, and conversion to condominium of such properties. The National Apartment Association (NAA) is an organization of local and state associations representing owners, builders, investors, developers and managers of multifamily properties. The NAA represents the interests of more than 200,000 multifamily professionals and the members of the NMHC and NAA together own and manage about one third of the nation's approximately 24 million rental housing units.

The just compensation clause serves as a vital shield against oppressive governmental land use regulation. It is, therefore, of paramount importance to these *amici*, all non-profit trade associations, and our members. The actual availability of an appropriate remedy for the occasional government action that results in a taking is critical to the livelihood of private landowners who either 1) have lost all reasonable economic use of their property solely in order to serve

the broader public (i.e., governmental) interests, or 2) are otherwise faced with overreaching governmental requirements including those that fail to substantially advance legitimate governmental interests. The latter type of governmental requirement is presented in this case by the city's demand that individual private property owners pay for society's costs of providing housing to low income persons. That affordable housing is needed by persons with low incomes is not the question. The question is whether this housing must be paid for by individual private property owners who happen to provide employment opportunities for low income people.

The NAHB has been before this Court as an *amicus curiae* or as of counsel on behalf of the property owner in prior "takings" cases involving governments' land use decisions.[1] The NAHB and ICSC joined to file an *amici curiae* brief in *Lucas v. South Carolina Coastal Council*, No. 91-453, currently before the Court. The NAHB's brief was favorably cited in this Court's *Nollan* opinion, 483 U.S. at 840.

Nollan is at the heart of the present controversy. The attached brief is submitted to show the need to resolve the question of whether a fee exacted by the government from an individual, as a condition for using its own private property, is an unconstitutional

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[1] *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987); *MacDonald, Sommer & Frates v. County of Yolo*, 477 U.S. 340, *reh'g denied*, 478 U.S. 1035 (1986); *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985); *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621 (1981); *Agins v. City of Tiburon*, 447 U.S. 255 (1980).

taking of private property when the fee is used for a legitimate public purpose but the individual does not directly, substantially or in any other reasonable and essential way contribute to the public's need to further such a purpose. These *amici* sincerely believe that the accompanying brief will assist the Court because our concerns are much broader than those of petitioners. Our members across the nation are faced with countless regulatory decisions on a daily basis that affect the use of privately held land. The vast majority of these decisions come from local governments and, as pointed out in the accompanying brief, some of these decisions do not respect the constitutionally protected property rights of individuals. While petitioner focuses its arguments on the harm the City of Sacramento inflicts on its concerns, our brief addresses the broader mandates of takings law that should be applied against those government decisions that abuse private rights and cites authorities different from those in petitioner's brief.

For the above reasons, this Motion should be granted.

Respectfully submitted,

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April 22, 1992

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INTEREST OF THE *AMICI CURIAE*

The interest of the *amici curiae* is set forth in the preceding motion for leave to file this brief.

SUMMARY OF THE REASONS FOR GRANTING THE WRIT

This Court has repeatedly stated that a governmental action violates the takings clause of the Fifth

Amendment if the action does not substantially advance legitimate government interests. The leading application of this aspect of takings doctrine appears in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). This rule is essential to guard against governmental acts that would impose on individuals costs that properly belong with the public as a whole even though the individual has not been denied economically viable use of its property.

The City of Sacramento's "linkage fee" does not *substantially advance* a legitimate government interest. The city justifies its fee through a purported nexus between office construction and the city's affordable housing needs. This justification, while clever and imaginative, is far too tenuous to pass constitutional scrutiny. If it is allowed to stand, local governments will stampede to require payments of money from new projects to fund any and all types of government purposes. Indeed, governments at all levels would be free to contrive any nexus, no matter how flimsy, between an individual's proposed use of his or her land and the furtherance of a legitimate public purpose.

There is something horrific in the city's position that those who bring in businesses, create jobs and provide employment to low income people thereby create the burden that low income people admittedly shoulder to find decent and affordable housing. Something more than this slim reed must be required. Something more substantial is required by the Constitution's just compensation clause.

Conditioning the use of private land to effectuate a public purpose causes an irreparable harm when the proposed land use has no "essential nexus" to that

public purpose and the government does not compensate the owner for his or her loss. This harm must be redressed by the Constitution. *Nollan*, 483 U.S. at 837. Regardless of whether the unconstitutional condition involves the payment of a fee or dedication of land the condition should be struck down.

Planning for and acquiring the necessary land and capital to build adequate public facilities to support our cities and towns, such as affordable housing for people of less financial means, is an important goal in maintaining society's quality of life. But propositions that further those ends must respect the property rights of individuals. Anything short of that proper respect, as has occurred here, is repugnant to the higher considerations expressed in the Constitution. The Constitutional rights at issue in this case must be confirmed by this Court.

These *amici* respectfully request the Court to grant certiorari in order to evaluate, after plenary consideration of the issues presented, the appropriate nexus required by the Constitution's takings clause. It is our hope that after the Court reviews the case it will send anew the message to all governments that "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922).

REASONS FOR GRANTING THE WRIT

I. THE QUESTION BEFORE THE COURT IS A SUBSTANTIAL FEDERAL QUESTION DESERVING OF THIS COURT'S SUPERVISION

A. The Fifth Amendment's Takings Clause, Which Ostensibly Prohibits Permit Conditions That Do Not Substantially Advance Legitimate Government Interests, Is In Jeopardy Of Becoming A Useless Limitation On Government Power

This Court has reiterated that a regulatory taking occurs if *either* the regulation or government action denies a property owner economically viable use of the property *or* the regulation or government act does not substantially advance a legitimate government interest. *Yee v. Escondido, CA*, No. 90-1947, slip op. at 1 (U.S. April 1, 1992); *Nollan*, 483 U.S. at 834; *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470, 485 (1987); *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980). The importance of maintaining the distinction between these two takings tests is self-evident. There are occasions where a government's actions substantially advance legitimate government interests but nonetheless deny a particular landowner all economically viable use of the private property.[1] Likewise, there are situations, such

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[1] *See, e.g., Florida Rock Industries, Inc. v. United States*, 21 Cl. Ct. 161 (1990); *Loveladies Harbor, Inc. v. United States*, 21 Cl. Ct. 153 (1990); *Cf. United States v. Riverside Bayview Homes*, 474 U.S. 121, 127 (1985) (While upholding the Clean Water Act's grant of jurisdiction to regulate certain wetlands, the Court noted that a property owner can still bring a takings claim in U.S. Claims Court if a dredge or fill permit is applied for and denied and the "effect of the denial is to prevent 'economically viable' use of the land in question").

as in this case, where a government's actions do not deny a landowner economically viable use of the property but nonetheless do not substantially advance a legitimate government interest. *Nollan*, 483 U.S. 825; *Surfside Colony, Ltd. v. California Coastal Commission*, 226 Cal. App. 3d 1260 (1991). These two tests are an important part of this Court's effort to protect individuals in situations where it would be unfair to impose costs on an individual that properly belong with the public. *Cf. Armstrong v. United States*, 364 U.S. 40, 49 (1960) (the Just Compensation Clause bars forcing on some people alone those "public burdens, which, in all fairness and justice, should be borne by the public as a whole."). *See also, Seawall Associates v. City of New York*, 542 N.E.2d 1059, 1065-66 (N.Y. 1989).

The Court does not have before it an allegation that the city's actions will deny economically viable use of property. The issue presented is whether the city's demand that the property owner pay for low income housing (on the basis that the property owner creates jobs for low income persons) substantially advances, in the Constitutional sense, the city's legitimate interest in providing such housing. "[T]he determination that there has been a taking 'ultimately calls as much for the exercise of judgment as for the application of logic.' " *Loveladies Harbor, Inc. v. United States*, 21 Cl. Ct. 153, 160 (1990) (*citing Andrus v. Allard*, 444 U.S. 51, 65 (1979)). Here, the petitioner who uses its property in a way that creates jobs is penalized by the forced payment of fees into a public fund that supports the housing costs of those who might fill these jobs. Can this be the concept of fairness and justice embodied in the Fifth Amend-

ment? If it is, then this Court's 1987 *Nollan* decision, after only a few years, is collapsing under the weight of lower court interpretations, and the "substantial advancement of legitimate government interests" takings test has become meaningless.

B. Sacramento's Linkage Fee Requirement Does Not Meet The Essential Nexus Requirement This Court Established In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)

This case is very much like the *Nollan* case, where the Court admonished the government for its attempt to compel a property owner to contribute to the realization of an easement, even though the government "may well be right that [the easement] is a good idea." *Id.*, 483 U.S. at 841. The Court stated in *Nollan*, 483 U.S. at 842, that if the government "wants an easement across the Nollans' property, it must pay for it." Similarly here, Sacramento may well be right that providing assisted housing for low income persons is a good idea. But, if the city wants to provide such housing, *it* must pay for it.

These *amici* believe this Court's opinions stating that a government's actions must "substantially advance a legitimate government interest" mandates, in the takings context, a direct connection between the government action and both the burden the individual places on the community and the benefits the individual will receive from the government action. In reviewing this direct connection (the Court's "essential nexus," *Nollan*, 483 U.S. at 837) the Court has stated that it requires more than the standard applied in due process or equal protection cases. *Nollan*, 483 U.S. at 834 n.3. The traditional due process standard that says "the State 'could rationally have decided'

the measure adopted might achieve the State's objective" is not sufficient when analyzing government actions under the just compensation clause. *Id.*

Where the government requires a property owner to pay a fee that has little, if any, connection (and certainly no direct, substantial or essential connection) to the relevant burdens imposed on the community by the owner's proposed land use or a fee that will not benefit the proposed land use in some direct, substantial or essential way, the government fee must be struck down as transgressing the limitations imposed upon it by the takings clause.

We recognize that the takings clause does not require that development exactions and fees be precisely tailored to the burdens and benefits attributable to the property being assessed. See, for example, the specifically and uniquely attributable test employed by some courts to evaluate impact fees. *Rosen v. Village of Downers Grove*, 167 N.E.2d 230 (Ill. 1960); *Pioneer Trust and Savings Bank v. Village of Mount Prospect*, 176 N.E.2d 799 (Ill. 1961); *Frank Ansuini, Inc. v. City of Cranston*, 264 A.2d 910 (R.I. 1970). But, the decision below, which equates the takings analysis with the extremely deferential due process level of scrutiny, is the other extreme. In disputing the petitioner's claim that *Nollan* requires more than a "due process" basis to support the city's asserted nexus, the Ninth Circuit below states that "*Nollan* holds that where there is *no evidence* of a nexus between the development and the problem that the exaction seeks to address, the exaction cannot be upheld." *Commercial Builders of Northern California v. City of Sacramento*, 941 F.2d 872, 875 (9th Cir. 1991) (emphasis added). In other words, according to

the Ninth Circuit's reading of *Nollan*, only a scintilla of evidence is necessary to support a constitutional nexus. We find this remarkable. How can the Ninth Circuit rationalize its statement with this Court's words?

> "[O]ur opinions do not establish that these standards are the same as those applied to due process or equal-protection claims. To the contrary, our verbal formulations in the takings field have generally been quite different. We have required that the regulation 'substantially advance' the 'legitimate state interest' sought to be achieved, . . . not that the 'State "could rationally have decided" the measure adopted might achieve the State's objective.' "

Nollan, 483 U.S. at 835 n.3 (citing cases). Yet, the Ninth Circuit says it is "not persuaded that *Nollan* materially changes the level of scrutiny" that must be applied to the ordinance at issue. *Commercial Builders*, 941 F.2d at 874. With respect, the nexus required in a "substantial advancement" takings case is something more than the Ninth Circuit would have us believe. Our view *does not* make the due process clause meaningless. There will be situations where the nexus tied to a regulatory requirement is sufficient to withstand the higher level of scrutiny demanded by the takings clause yet, nonetheless and for non-nexus reasons, the regulation is otherwise arbitrary, capricious or unreasonable and subject to a due process claim.

II. THIS CASE REFLECTS A LOCAL LAND USE PRACTICE THAT CLAMORS FOR THIS COURT TO REITERATE ITS ADMONITION THAT THE GOVERNMENT MUST RESPECT THE CONSTITUTIONAL RIGHTS OF INDIVIDUAL CITIZENS WHEN REGULATING PRIVATE ACTIONS PURSUANT TO ITS POLICE POWERS

It has been a long-standing governmental practice to demand land (e.g., development exactions and land dedications) or money (e.g., impact fees and fees in lieu of dedications) from property owners who propose to build on their land. See, for example, Bauman & Ethier,*Development Exactions and Impact Fees: A Survey Of American Practices*, 50 Law & Contemp. Problems 51 (1987), and authorities cited therein. Linkage fees, *see* Petition for Certiorari at 7 - 12, are the next step beyond impact fees in the evolution of charges on new development.[2] But few developers and builders litigate when municipal governments unfairly and unconstitutionally exact fees and property that have little relation to the services or benefits provided to a proposed project or the burdens placed on the community by the project. These entities are entrepreneurs and businesses that simply find it impractical in almost all cases to challenge unconstitutional government requirements. It does not take a rocket scientist, therefore, to understand why much of the

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[2] Sadly, linkage fees are not the latest step in this evolutionary process. Most recently, "development excise taxes" have been enacted and proposed in several towns across America where the fee to be used for public uses is imposed on the alleged privilege of pursuing development. These governments assert that no nexus, not even a rational nexus, is required to support these fees. *See* Ethier & Weiss, *Development Excise Taxes: An Exercise In Cleverness And Imagination*, 42 Land Use L. & Zoning Digest 3 (No. 2 Feb. 1990).

impact fee and exaction litigation nationwide has been brought by their organized membership trade associations rather than the individual property owners. However, these associations with their limited resources must pick their fights carefully. Consequently, many of the demands and exactions imposed on individuals by local governments go unchallenged.

In a national symposium on development exactions, Professor Babcock, the dean of American land use law, cited examples of abusive exactions and followed with this discussion:

> In each of these cases one can imagine the initial reaction of the "extractee" - outrage. In each case he surely went to his attorney and asked two questions: (1) How long will it take to get a final answer in court if we challenge this condition?; and (2) How much will it cost?
>
> The answers probably were: (1) It will take three to four years, with the possibility of defeat; and (2) It will cost tens if not hundreds of thousands of dollars.
>
> By the time the developer approaches his attorney, he has invested a large sum of front-end money and has a great deal of interest in obtaining a permit. Moreover, he wants the permit immediately. He takes out his pencil, does some calculating, and decides to pay up. This example is a classic illustration of what I call "municipal leverage."

Babcock, *Foreword to Exactions: A Controversial New Source For Municipal Funds*, 50 Law & Contemp. Problems 1, 2 (1987). *See also* Taub, *Exactions, Link-*

ages, and Regulatory Takings: The Developer's Perspective, 20 The Urban Lawyer 515, 518 (1988) ("The fact that developers are willing to pay suggests the power of the local government's position, not the reasonableness of the exaction.").

Local governments are often well aware of the amount of time, money and other resources a builder of a large development (or even, in relative terms, of a single house) has invested in a project before the first application for approval is submitted. Local governments are usually free to exercise their municipal leverage to extract all types of property interests and money from project applicants. Only occasionally will courts scrutinize the exercise of this municipal leverage in ringing terms:

> While in general subdivision regulations are a valid exercise of the police power, made necessary by the problems subdivisions create - i.e., greater needs for municipal services and facilities -, the possibility of arbitrariness and unfairness in their application is nonetheless substantial: A municipality could use dedication regulations to exact land or fees from a subdivider far out of proportion to the needs created by his subdivision in order to avoid imposing the burden of paying for additional services on all citizens via taxation. To tolerate this situation would be to allow an otherwise acceptable exercise of police power to become grand theft.

Collis v. City of Bloomington, 246 N.W.2d 19, 26 (Minn. 1976);

> We have no doubt the municipality was conscious of the illegality of what it did and for that reason refrained from adopting an ordinance, seeking instead to achieve its ends through the guise of "voluntary" contributions with spurious "agreements" to make them stick.
>
> Defendants argue that even if the payments were illegally extorted, as we think they were, nonetheless plaintiff ought not recover . . . .
>
> . . . .
>
> Defendants' position boils down to the proposition that one who buys with notice of municipal lawlessness thereby becomes bound by it. Thus understood, defendants' position is frivolous.

West Park Ave., Inc. v. Township of Ocean, 224 A.2d 1, 4-5 (N.J. 1966);

> Regulation H requires the dedication of seven-and-one-half per cent of the total land comprising the subdivision without any consideration of the town's need for the land. Moreover, there is evidence, that was improperly excluded, which indicates that some developers would be permitted to pay the town the value of the land in lieu of its dedication. This appears to us to be an out-and-out plan of extortion. . . .

J.E.D. Associates, Inc. v. Town of Atkinson, 432 A.2d 12, 14 (N.H. 1981); *see also Nollan*, 483 U.S. at 837.

The just compensation clause is one of the few constraints on the public's use of its regulatory powers over the use of an individual's land. Its full application is needed by property owners of all types to provide some balance to weigh against a municipality's leverage.

As difficult as a takings challenge is for the property owner, the just compensation clause should remain a fundamental crutch to support the property owner in fighting the heavy-handed leverage brought to the table by the municipality. The Ninth Circuit's opinion below fatally damages this constitutional crutch.

These *amici* do not mean to suggest that all local governments—counties, cities and towns—are ruthless and unreasonable in conducting the affairs of their daily land use decision making processes, although at times in the trenches of local planning board hearings it appears so from the project applicant's viewpoint. Many, if not most, local governments are reasonable and sincere in their efforts to promote the public's health, safety and welfare. But while it is our view that too many communities disrespect Constitutional considerations for the sake of political or financial expediency, if only one community forsakes one of its citizen's rights, the Constitutional damage is done and we are all worse off because of it. It is exactly because of these situations that Constitutional doctrine must be developed to protect individual rights, including property rights. The courts must step in to correct the constitutional damage and restore fairness and justice.

Property owners and builders are loathe to sue the government because the costs of litigation and delay

outweigh the costs of complying with the government's unconstitutional demands. Also, the same governmental agency a builder sues today has to provide the necessary permits on the next project the builder wants to undertake tomorrow—a very uncomfortable position in which to put yourself. Another compelling reason property owners refrain from litigating is that most are financially incapable of sustaining such a lawsuit. Therefore, it is vitally important that this Court grant certiorari rather than wait and see how the issue develops in future cases. Practically speaking, there very well may be no future "linkage" fee cases if the Ninth Circuit's decision is allowed to stand. Counsel would be hard pressed to advise any permit applicant to pursue any linkage fee litigation and these unconstitutional permit conditions will crush merrily forward.

III. THE PROPER CONSTITUTIONAL BALANCE BETWEEN LEGISLATIVE POWER AND JUDICIAL DEFENSE OF INDIVIDUAL RIGHTS DEMANDS THAT THIS CASE RECEIVE PLENARY CONSIDERATION BY THE COURT

This Court has eloquently stated that the legislature is the domain for identifying the public's interest in legislation.

> An attempt to define [the police power's] reach or trace its outer limits is fruitless, for each case must turn on its own facts. . . . Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the

> public needs to be served by social legislation
>
> . . . .

Berman v. Parker, 348 U.S. 26, 32 (1954). With equal, if not greater force, however, the judiciary must remain the guardian of individual and property rights. The legislature defines the scope of the public's interest, but when individual property rights are destroyed to further those interests, the courts must step in. The role of the courts is to define when the government has gone too far and insure that adequate remedies exist to redress the individual's loss. The Ninth Circuit failed to exercise its duty of supervision in the conflict between the public's interest and the private property owner's rights.

While the takings clause *in general* does not act to prohibit transfers of wealth deemed appropriate by the majoritarian branches of government, courts ought to be suspicious of governmental actions that affect a narrow class of individuals as such actions can be taken without the usual political constraints. Justice Scalia recognized this danger in *Pennell v. City of San Jose*, 485 U.S. 1, 21-23 (1988) (Scalia, J., dissenting). Thus, when wealth is exacted from a narrow class of individuals, as here, the takings clause should wield its power to limit governmental actions.

This Court warned that it would be particularly careful about the adjective "substantial" in the substantial advancement takings test where "the actual conveyance of property is made a condition to the lifting of a land-use restriction, since in that context there is heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated police power objective." *Nollan*, 483 U.S. at 841. Similarly here, to admonish the cleverness and

imagination of local governments, this Court should demand that lower courts be particularly careful about the level of nexus allowed to justify a project fee where the payment of the fee is made a condition to the lifting of a land-use restriction or the issuance of a permit. In this context too there is heightened risk that the government's intent is to avoid placing payment for its police power purpose on the public as a whole. "It is exactly this imposition of general costs on a few individuals at which the 'taking' protection is directed." *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 147 (1978) (Rehnquist, J., dissenting).

The Court has noted that

> many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities, and the Just Compensation Clause of the Fifth Amendment is one of them. As Justice Holmes aptly noted more than 50 years ago, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S., at 416.

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 321- 22 (1987). The context of the present case is a perfect vehicle within which the Court may elaborate on and reaffirm these just compensation clause principles.

Local government decisions, such as those below, that vitiate federal Constitutional guarantees must be

reversed. Property owners and builders, who are in an excruciating minority position when it comes to local government land use controls, have nowhere else to turn. The regulated and, we presume, most of the regulators await with hope for more United States Supreme Court guidance on this critical issue.

CONCLUSION

For the reasons stated above and in the Petition for Certiorari, this Court is urged to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

Respectfully Submitted,

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